

**DEBRA L. TORLINE**  
Claimant

Insurance Carrier

- (1) What is the nature and extent of claimant's injury and disability?

- (2) What is the amount of compensation due as of the date of the Award?
- (3) Was there an underpayment of temporary total disability compensation?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

The Administrative Law Judge found, and the Board agrees, that claimant failed to put forth a good faith effort in obtaining employment after her injury. Claimant's meager effort included searching over the internet, while limiting herself to working from her home, after claimant argued that driving in a car caused muscle spasms in her back and pain down her leg. However, in reviewing the medical records of both Guillermo Garcia, M.D., claimant's board certified orthopedic surgeon, and Dr. Mills, neither limited claimant in any way from driving a vehicle. Therefore, claimant's self-limitation, which substantially limited her ability to obtain employment in her hometown of Hanston, Kansas, did not constitute a good faith effort to obtain work, post injury, as is required by K.S.A. 1999 Supp. 44-510e. Therefore, the fact-finder will have to determine an appropriate post-injury wage.<sup>1</sup>

The Administrative Law Judge found both Monty Longacre and James Molski to be credible with regard to their opinions regarding the wages claimant was capable of earning after the injury. In imputing a wage to claimant, the Administrative Law Judge considered both the opinion of Mr. Molski, that claimant could earn from \$5.50 to \$6 an hour, and the opinion of Mr. Longacre, that claimant could earn from \$6.75 to \$7 an hour. Claimant was imputed a wage of \$6.25 an hour, which equates to a 25 percent wage loss. This, when coupled with the 51 percent task loss, resulted in a work disability of 38 percent. The Board agrees with the analysis of the Administrative Law Judge and affirms the award of a 38 percent permanent partial general disability.

The Board, therefore, finds that claimant is entitled to a 38 percent permanent partial general disability from an accident occurring on June 26, 2000, and based upon an average weekly wage of \$333.69.

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<sup>1</sup> *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Pamela J. Fuller dated January 3, 2003, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2003.

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BOARD MEMBER

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BOARD MEMBER

c: Henry A. Goertz, Attorney for Claimant  
Kurt W. Ratzlaff, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Director